

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DUSTY ALANSON JAMES WING,

Plaintiff,

-against-

CORRECTION OFFICER MYERS, et al.,

Defendants.

ORDER

18-CV-11056 (PMH)

PHILIP M. HALPERN, United States District Judge:

Plaintiff Dusty Alanson James Wing (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, brings this action under 42 U.S.C. § 1983 against, *inter alia*, Correction Officer Myers, Sergeant Ryan Bowers, Sergeant Douglas DePaolo (collectively, “State Defendants”). (Doc. 2).

Pending presently before the Court is State Defendants’ unopposed motion for summary judgment on the limited issue of administrative exhaustion. (Doc. 36; *see also* Doc. 37; Doc. 38; Doc. 39; Doc. 40; Doc. 41; Doc. 42). Upon review of the documents submitted in support of this motion, State Defendants failed to file an affidavit of service reflecting how and when they served Plaintiff with their motion papers. As the Court has before it no documentation evidencing service, the motion for summary judgment is denied without prejudice to refiling.

State Defendants shall serve and file a letter on or before April 2, 2021 advising as to whether they wish to re-file their motion for summary judgment. Should they be so advised, the Court will set a new briefing schedule. The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 36 and mail a copy of this Order to Plaintiff.

SO ORDERED:

Dated: White Plains, New York
March 26, 2021



Philip M. Halpern
United States District Judge